

AMENDED OPINION & ORDER  
[Resolving Doc. No. 22]

- 1 -

Case No. 5:05-cv-2140  
Gwin, J.

v. Ohio, 488 U.S. 75 (1988). Neither party objects to the Magistrate Judge's recommendation.

The Federal Magistrates Act requires a district court to conduct a de novo review only of those portions of a Report and Recommendation to which the parties have made an objection. 28 U.S.C. § 636(b)(1). Parties must file any objections to a Report and Recommendation within ten days of service. Failure to object within that time waives a party's right to appeal the magistrate judge's recommendation. FED. R. CIV. P. 72(a); see Thomas v. Arn, 474 U.S. 140, 145 (1985); United States v. Walters, 638 F.2d 947 (6th Cir. 1981). Absent objection, a district court may adopt the magistrate's report without review. Thomas, 474 U.S. at 149. Moreover, having conducted its own review of the parties' briefs on the issue, this Court agrees with the conclusions of the Magistrate Judge.

Accordingly, the Court adopts in whole Magistrate Judge Gallas's findings of fact and conclusions of law and incorporates them fully herein by reference. The Court thus **GRANTS IN PART** the Petitioner's habeas petition with respect to his first and third grounds to allow the Petitioner Bachaus to undertake a delayed appeal, and appoints the Petitioner new counsel for the appeal. Further, the Court certifies pursuant to 28 U.S.C. § 1915(a)(3) that, as to his second ground, an appeal from this decision could not be taken in good faith, and no basis exists on which to issue a certificate of appealability to the Petitioner. 28 U.S.C. §2653(c); Fed. R. App. P. 22(b).

IT IS SO ORDERED.

Dated: February 19, 2008

s/ James S. Gwin  
JAMES S. GWIN  
UNITED STATES DISTRICT JUDGE